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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,510	11/08/2001	Charles S. Schasteen	NVI 5183.1	9657

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EXAMINER

FORD, VANESSA L

ART UNIT PAPER NUMBER

1645

DATE MAILED: 03/26/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/005,510

Applicant(s)

SCHASTEEN ET AL.

Examiner

Vanessa L. Ford

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-143 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-143 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - Group I. Claims 1-30, 113-119 and 136-143 are drawn to a composition comprising oocysts and kit classified in class 424, subclass 267.1. Further species election is required.
 - Group II. Claims 31-55 are drawn to a method for producing or separating oocysts classified in class 435, subclass 243. Further species election required.
 - Group III. Claims 56-102 are drawn to a method for inducing sporulation classified in 424, subclass. Further species election is required.
 - Group IV. Claims 103-112 are drawn to method for monitoring sporulation of oocysts classified in class 435, subclass 258.4. Further species election is required.
 - Group V. Claims 120 –135 are drawn to a composition for the storage and method for storing of sporulated oocysts, classified in 435, subclass 174.

The inventions are distinct, each from the other because of the following reasons:

2. Groups I and V are drawn to different products. The inventions are shown to be distinct because they are physically and functionally distinct chemical entities.
3. Groups I and Group II are related as product and process of made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the method of Group II could be used to make materially different compositions for the prevention or control of coccidiosis.
4. Groups II, III, IV and V are drawn to distinct methods which differ in the method objectives, method steps and in reagent used.
5. Groups I and (Groups III and IV) are related as product and process of use. These inventions can be shown to be distinct if either or both of the following can be shown. (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MEP 806.05(h)). In the

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instant case, the composition of Group I can be used to challenge vaccinated animals.

6. A. In the event applicant elects Group I, claims 1-30, 113-119 and 136-143, applicant must elect a single species from the list below. Claims 1-30, 113-119 and 136-143 recited distinct species based on structural differences.

- a) alkali metal
- b) free of alkali metal
- c) composition comprising one organism
- d) composition comprising a mixture of organisms

- B. In the event that applicant elects Group II, claims 31-55, applicant is required to elect a single species from the list below. Claims 31-55 recited distinct species based on structural differences.

- a) sieving, please elect shaker screening or mesh screen
- b) centrifuge, please elect bottle or continuous

- C. In the event that applicant elects Group III, claims 56-102, applicant must elect a single species from the list below. Claims 56-102 recite distinct species based on structural differences.

- a) maintain oxygen
- b) with alkali metal
- c) without alkali metal
- d) with controlling pH
- e) without controlling pH
- f) addition of oxygen and oxidizing agent
- g) method of separating, (filtration)
- h) method of separating, (centrifuge)

D. In the event that applicant elects Group IV, claims 103-112, applicant must elect a single species from the list below. Claims 103-112 recite distinct species based on structural differences. Please elect a single parameter from the list below:

- a) pH
- b) dissolved oxygen
- c) rate of introduction
- d) rate of flow acid of acid or base

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

7. Because these inventions are distinct for the reasons given and have acquired a separate status in the art because of their recognized divergent subject matter as shown by their different classification, restriction for examination purposes as indicated is proper. Moreover, in the absence of restriction it would place an undue search and examination burden on the examiner.
8. Applicant is advised that the reply to this requirement to be complete must include an election of invention to be examined even though the requirement be traversed (37 CFR 1.143).
9. Applicant is reminded that upon that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. 1.48(b) and by the fee required under 37 C.F.R. 1.17(h).

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10. Any inquiry of the general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Office Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for the Group 1600 is (703) 308-4242.

Any inquiry concerning this communication from the examiner should be directed to Vanessa L. Ford, whose telephone number is (703) 305-4735. The examiner can normally be reached on Monday – Friday from 7:30 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (703) 308-3909.



Vanessa L. Ford
Biotechnology Patent Examiner
March 20, 2003



LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
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